

**BEFORE THE NATIONAL ANTI-PROFITEERING AUTHORITY**

**UNDER THE CENTRAL GOODS & SERVICES TAX ACT, 2017**

Case No. 01/2022

Date of Institution 28.01.2021

Date of Order 05.04.2022

**In the matter of:**

1. **Director General of Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.**

Applicant

**Versus**

- M/s Alton Buildtech India Pvt. Ltd., Adani House, Plot No. 83,  
Industrial Area, Sector 32, Gurgaon, Haryana- 122001.**

Respondent

**Quorum:-**

Sh. Amand Shah, Chairman & Technical Member

Sh. Pramod Kumar Singh, Technical Member

Sh. Hitesh Shah, Technical Member.

**Present:-**

1. None for the Applicant.

2. None for the Respondent.

## ORDER

1. The Present Report dated 28.01.2021 has been received from the Applicant i.e. the Director General of Anti-Profiteering (DGAP) in response to the Authority's Order No. 65/2020 dated 16.10.2020 wherein Profiteered amount of Rs. 6,24,48,008/- was confirmed against the Respondent and the DGAP was also directed to investigate other two parts of his Project Aangan i.e Phase II & III under Rule 133(5) of the Central Goods & Service Tax (CGST) Rules, 2017.
2. After the receipt of the NAA's Order No. 65/2020 dated 16.10.2020 a Notice under Rule 129 of the Rules was issued by the DGAP on 12.11.2020, calling upon the Respondent to reply as to whether he admitted that the benefit of input tax credit had not been passed on to the home buyers and furnish all documents in support of his reply.
3. The period covered in the present investigation is from July 2017 to September, 2020.
4. The DGAP has Reported that the Respondent in response to the Notice dated 12.11.2020 has submitted his replies vide letters and e-mails dated 04.12.2020, 31.12.2020, 08.01.2021, 12.01.2021 and 18.01.2021 which could be summarised as follow:
  - (i) The Respondent has been engaged in construction of residential complexes under the 'Affordable Housing Policy, 2013' framed by the State of Haryana.

- (ii) The Project- Aangan, Phase-II has been launched much after the introduction of GST and Phase- III was yet to be launched. The Respondent has submitted the chronology of the events related to Aangan, Phase- II and Phase- III and the same is reproduced below:

**Aangan Phase-II (Launched in 2018)**

S. No.	Particulars	Date	Supporting Documents.
1	Land Purchased	01.03.2016	Sale Deed
2.	Change of Land Use (License)	16.12.2016	Copy of Form LC-V
3.	Approval for building plan	28.11.2017	Copy of Form BR-III
4.	RERA Registration	22.12.2017	RERA Registration Certificate
5.	Forest NOC	12.01.2018	Copy of NOC
6.	Advertisement for booking of flats published in Newspaper	18.01.2018 & 25.01.2018	Copy of Newspapers
7.	Letter of acceptance issued to Contractor	16.04.2018	Copy of LOA
8.	Forest and Aravali NOC	29.05.2018	Copy of NOC
9.	STP permission Letter for conducting draw for allotment of flats	04.06.2018	Copy of letter
10	Draw of lots for allotment of flats	12.06.2018	Copy of Newspaper
11.	Allotment letter issued to Successful allottees seeking 25% of total sale price of flats	21.06.2018	Copy of Sample Letter issued
12.	Environment Clearance	02.05.2019	Copy of NOC

**Aangan Phase-III (Not yet launched)**

S. No.	Particulars	Date	Supporting Documents.
1	Land Purchased	28.09.2017	Sale Deed
2.	Change of Land Use (License)	Pending	
3.	Approval for building plan	Not yet applied	
4.	RERA Registration	Not yet applied	
5.	Forest NOC	Not yet applied	
6.	Advertisement for booking of flats published in Newspaper	NA	
7.	Letter of acceptance issued to Contractor	NA	
8.	Forest and Aravali NOC	NA	
9.	STP permission Letter for conducting draw for allotment of flats	NA	
10	Draw of lots for allotment of flats	NA	
11.	Allotment letter issued to Successful allottees seeking 25% of total sale price of flats	NA	
12.	Environment Clearance	NA	

- (iii) He has also submitted that the provisions of Section 171 of the CGST Act, 2017 did not apply to the impugned projects, which have commenced after introduction of GST and requested to close

the investigation forthwith, in line with the legal provision as applied by DGAP and upheld by this Authority.

(iv) He has submitted further, the Phase-wise details of construction of different towers of First Phase-I- Residential Tower- A1, A2, A3, A4, B1 and B2, Commercial Tower C followed by Phase-II- Residential Tower- D1 and D2, Commercial Tower E.

5. The DGAP has further states that the claim of the Respondent that the Phase-II and III of project Aangan was launched in post-GST era seems true and can be verified independently from the records of the State Government, RERA website and documents submitted by the Respondent. It has been observed by the DGAP that Project- 'Aangan' was covered under Affordable Housing Scheme. The scheme has to follow a set of guidelines of the State Government of Haryana issued vide Notification No. PF-27/48921 dated 19.08.2013 under Affordable Housing Policy, 2013 and all the builders have to abide by this policy. The date of commencement of the project, allotment rates, allotment criteria and eligibility criteria, were defined in the policy itself. The date of commencement of the project for purpose of this policy is the date of approval of building plans or grant of environmental clearance, whichever is later.

6. The DGAP has further stated that from the perusal of website of Haryana RERA, it was observed that only two Registration Certificates had been issued to the Respondent i.e. No. 260 of 2017 dated 03.10.2017 and 391 of 2017 dated 22.12.2017. From perusal of the Registration Certificates, it was observed

that Phase-I and II are registered with RERA, however, Phase-III had not been registered till date. Further, Section 3(1) of the Haryana RERA Act, 2016 states that:

*“no promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act”.*

Thus, in terms of the provisions of the RERA Act, advertisements and bookings in the project could not be done till the registration was obtained. From the perusal of documents related to advertisement, it appeared that the Respondent had registered with RERA authorities' post-GST launch only.

7. The DGAP has also intimated that the Respondent had also submitted the approved building plan for Block- D1, D2 and E approved by the Chief Town Planner, Building Plan Approval Committee and copy of advertisement for booking of flats published in the newspaper dated 18.01.2018 and 25.01.2018 and letter dated 04.06.2018 of Senior Town Planner for conducting of draw for allotment of flats in respect of Phase-II. A copy of letter of acceptance issued to the contractor, Forest NOC, sample letter issued to successful Allottees, seeking 25% of total sale price of flats and copy of Environment Clearance NOC dated 02.05.2019 were also submitted. The DGAP has

also submitted that after receipt of the Environment clearance, construction work had started at site and the Environmental clearance for Phase-II was issued on 02.05.2019.

8. The DGAP has further submitted that for Phase – II, the RERA registration was done on 22.12.2017 and draw of lots for allotment of flats was done on 12.06.2018 and as the project has been registered in post-GST era, booking and receipt of payments had taken place post introduction of GST, there was no pre-GST tax rate or input tax credit structure which could be compared with the post-GST tax rate and input tax credit. It appeared to the DGAP that the provisions of Section 171(1) of Central Goods and Services Tax Act, 2017, relating to profiteering, would not be attracted.
9. The DGAP has also observed that the project “Aangan, Phase-III” was yet to be launched and had not been registered with RERA till date. Therefore, in respect of the project “Aangan, Phase-III”, question of profiteering does not arise.
10. The DGAP has conclusively submitted that the provisions of Section 171(1) of Central Goods and Services Tax Act, 2017 are attracted in neither Phase II nor Phase III of the Project “Aangan”.
11. The above Report was considered by the Authority in its sitting and vide its order dated 15.02.2021 the DGAP was directed to file clarification under Rule 133(2A)

- i. Whether any ITC has been claimed by the Respondent in the pre GST period.
- ii. How many projects are registered under the present registration
- iii. How the ITC has been apportioned amongst these projects under the same registration.

12. The DGAP has filed his para-wise clarification vide letter dated 23.02.2021 which are as follows:-

i As regards the first issue of whether any ITC has been claimed by the Respondent in the pre-GST period, the DGAP has observed that with effect from 01.03.2016, the service of construction of affordable housing, provided by the Respondent, was exempt from Service Tax, vide Notification No. 25/2012-ST dated 20.06.2012, as amended by Notification No. 9/2016-ST dated 01.03.2016. Therefore, the Respondent was exempted from the Service Tax liability in the pre GST era. Hence no CENVAT/input tax credit was available to the Respondent in the pre-GST era. From the Service Tax Returns filed for the period from April 2016 to June 2017, it is seen that the Respondent had not availed any CENVAT credit.

ii. During the period under investigation, two projects, "Project - Aangan Phase-I" and "Project - Aangan Phase - II" had been registered under the present registration with HRERA vide No. 260 of 2017 dated 03.10.2017 and 391 of 2017 dated 22.12.2017. The third project, "Project - Aangan Phase III" is yet

to be launched and was not registered with RERA during the investigation period.

iii. A Report dated 14.06.2019 in respect of "Project – 'Aangan' Phase - I" was sent for profiteered amount of Rs. 6,20,15,693/- which was confirmed by the NAA vide Order No. 65/2020 dated 16.10.2020. In the said Order, the NAA confirmed the profiteered amount reported by the DGAP and directed to investigate other projects also, under Rule 133(5) of the CGST Rules, 2017. In respect of Project – 'Aangan' Phase - II, vide report dated 27.01.2021, it was reported that the RERA registration was done on 22.12.2017 and draw of lots for allotment of flats was done on 12.06.2018. Thus, in the instant case, as the project has been registered in post-GST period, booking and receipt of payments have taken place post introduction of GST and there is no pre GST tax rate or input tax credit structure which can be compared with the post-GST tax rate and input tax credit. Accordingly, a Report dated 25.01.2021 was submitted to the NAA concluding that the provisions of Section 171 (1) of the CGST Act, 2017 were not attracted in the present case. Hence, apportionment of ITC among the projects was not examined. However, at the time of investigation of the "Project - Aangan Phase-1", as per the GSTR 3B returns, it was seen that the total ITC for the entire project was Rs. 7,08,27,978/- (including transitional credit of Rs.2,43,044/-) out of which ITC apportioned towards "Project - Phase I was Rs.5,91,28,513/-. The said amount of ITC for 'Project – Aangan' Phase-I has been confirmed by the NAA vide the above mentioned Order No. 65/2020 dated 16.10.2020.





13. We have carefully considered the DGAP's Report and all other submissions which have been placed on record and find that the following issues are required to be settled in the present proceedings:-

I. Whether there is benefit of additional ITC available to the Respondent which has not been passed on by him?

II. Whether there is any violation of the provisions of Section 171 (1) of the CGST Act, 2017 by the Respondent?

14. Perusal of the record reveals that the Project 'Aangan' consist of three Phases viz. I, II and III. Regarding Phase I the DGAP vide Report dated 14.06.2019 had alleged Profiteering of Rs. 6,24,48,008/- and the same had been confirmed by this Authority vide its Order dated 65/2020 dated 16.10.2020. Vide the same order DGAP was directed to investigate Phase II and Phase III. It has been revealed that the project is an affordable Housing project as notified by Town & Country Planning Department, Government of Haryana vide Notification dated 19.08.2013. The RERA registration for the Phase II of the project was done on 22.12.2017 and the Phase II was advertised in newspapers on 18.01.2018 and 25.01.2018 and finally the draw of lots for allotment of flats was done on 12.06.2018. Thus the project had been registered in post-GST, booking and receipt of payments have taken place post introduction of GST and there is no pre GST tax rate or input tax credit structure which can be compared with the post-GST tax rate and input tax credit. The DGAP has also submitted that the Environment clearance for

Phase-II was issued on 02.05.2019 and thereafter the construction work had started at site.

15. The chronology of above events shows that the service rendered by the Respondent by way of construction and development of the project was not in existence during the pre-GST regime. Also the Phase III of the project is it yet to be launched and has not been registered with RERA till date.
16. In the present case for Phase II the draw of lots, allotment of units and receipt of payments has taken place in the post-GST era. It is also apparent from the record that the Respondent has received the Environment Clearance from the State Environment Impact Assessment Authority Haryana on 02.05.2019 before which he could not have started the execution of the project. On the basis of the sequence of the above events it could be safely concluded that the above project has been started after coming in to force of the GST w.e.f. 01.07.2017. It is also clear that the homebuyers were allotted flats only after coming in to force of the GST w.e.f. 01.07.2017. As project was launched after implementation of the GST w.e.f. 01.07.2017, apparently there was no pre-GST tax rate or input tax credit availability that could be compared with the post-GST tax rate and the input tax credit, to determine whether there was any benefit that was required to be passed on by way of reduced prices. Phase III of the project it is yet to be launched and had not been registered with RERA till date.
17. Based on the above facts it is established that the Respondent has not contravened the provisions of Section 171 (1) of the

CGST Act, 2017 and we find no merit in the instant case and the same is accordingly dismissed.

18. The quasi-judicial proceedings in the matter could not be completed by the Authority due to lack of required quorum of members in the Authority during the period 29.04.2021 till 23.02.2022, and that the minimum quorum was restored only w.e.f. 23.02.2022 and hence the matter was taken up for quasi-judicial proceedings vide Order dated 23.03.2022 and the Applicant No. 1 was given one more opportunity to file written submissions against the DGAP's Report. However, the Applicant No. 1 vide his email dated 29.03.2022 reiterated his earlier submissions made via email dated 13.12.2020. Further, the Hon'ble Supreme Court, vide its Order dated 23.03.2020, while taking suo moto cognizance of the situation arising on account of Covid-19 pandemic, has extended the period of limitations prescribed under general law of limitation or any other specified laws (both Central and State) including those prescribed under Rule 133(1) of the CGST Rules, 2017, as is clear from the said Order which states as follows:-

"A period of limitation in all such proceedings, irrespective of the Limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings."

Further, the Hon'ble Supreme Court, vide its subsequent Order dated 10.01.2022 has extended the period(s) of limitation till

28.02.2022 and the relevant portion of the said Order is as follows:-

“The Order dated 23.03.2020 is restored and in continuation of the subsequent Orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.”

Accordingly this Order having been passed today falls within the limitation prescribed under Rule 133(1) of the CGST Rules, 2017.

19. A copy of this order be sent to the Applicants and the Respondent free of cost. File of the case be consigned after completion.



Sd/-  
(Amand Shah)  
Chairman &  
Technical Member

Sd/-  
(Pramod Kumar Singh)  
Technical Member

Sd/-  
(Hitesh Shah)  
Technical Member

Certified Copy

  
(Dinesh Meena)  
Secretary, NAA

F. No. 22011/NAA/126/Alton/2021

Date: 05.04.2022

Copy To:-

1. M/s Alton Buildtech India Pvt. Ltd., Adani House, Plot No. 83, Industrial Area, Sector 32, Gurgaon, Haryana- 122001.
2. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.

3. NAA Website
4. Guard File.

scd →